

REMARKS

Claims 1-4, 7-12, 14-16, 55-57, and 64-89 are pending. Claims 17-38, 41-43, and 58-63 are withdrawn. Claims 5-6, 13, 39-40 and 44-54 are canceled. Minor amendments have been made to claim 58.

Claims 1, 2, 7-12, 14-16, 41-43, 58, 64-67, 71-77 and 81-89 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent App. Pub. No. 2005/0004837 to *Sweeney et al.* Claims 3-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Sweeney et al.* in view of Examiner's Official Notice. Claims 55-57 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Sweeney et al.* in view of U.S. Patent App. Pub. No. 2002/0082925 to Herwig.

Applicant notes that claims 58-63 have been previously withdrawn. The Examiner has examined withdrawn claims 58-63. Applicants have previously amended claim 58 to include limitations similar to those included in pending independent claims 1, 64 and 65. Applicant presumes that the Examiner will rejoin withdrawn claims 58-62 with the pending claims upon finding of allowable subject matter therein. Accordingly, Applicant has addressed the patentability of withdrawn independent claim 58 in discussion below regarding patentability of currently pending claims 1, 64, and 65.

Applicant appreciates the courtesies extended to Applicant's counsel during a telephone interview on December 22, 2010. The substance of the interview is as follows:

1. The interview did not include any exhibits or demonstrations.
2. Claim 1 was discussed in particular.
3. U.S. Patent App. Pub. No 2005/0004837 to *Sweeney et al.* was discussed.
4. Applicant's counsel and the Examiner discussed how each independent claim provides customized media to a customer at a physical point of sale proximate to the time of a sales transaction for a good/service.
5. *Sweeney et al.* is directed to pre-sales transaction compound marketing and does not disclose a physical point of sale.
6. No other matters were discussed.
7. Applicant would file a Reply commensurate with the interview.

The Examiner's Rejection Under 35 U.S.C. 102(e) Must Be Withdrawn Since Sweeney et al. Fails to Disclose All Claim Limitations

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913 (Fed. Cir. 1989). Furthermore, the elements must be arranged as required by the claim.

Independent claims 1, 58, 64, and 65 are directed to a computer implemented method, computer system, and computer program product for "providing to a customer customized media at a physical point of sale (PPOS)." Each independent claim also requires receiving/receipt of a customer identifier at "a point of sale computer located proximate to the PPOS." Further, each independent claim requires communicating the "generated item of current time-sensitive information to the customer at the PPOS proximate to the time of the sales transaction." Thus, the claims require a physical point of sale that is different than a point of sale computer, and a sales transaction. See page 2, l. 31- page 3, l. 4, and page 7, l. 9-16 of the specification for a description of the physical point of sale.

Sweeney et al. does not teach, nor could it suggest, providing customized media to a customer "at a physical point of sale (PPOS) at a time of a sales transaction for a good/service." Rather, *Sweeney et al.* concerns compound marketing to facilitate computer-based commerce. More specifically, *Sweeney et al.* is directed to a method of compound marketing, wherein vendor offerings are targeted to specific users based on information stored in the user's profile. The users may propagate the vendor offerings to other users via a communications network in return for a reward.

See paragraphs 2, 5, and 9 of *Sweeney et al.* Nowhere does *Sweeney et al.* disclose communicating anything to, or receiving anything from, a customer at a physical point of sale. For this reason, *Sweeney et al.* could not teach "receiving a customer identifier from a customer at a point of sale computer located proximate to the PPOS." Further, no specific transaction between a retailer and a customer at a physical point of sale is disclosed in *Sweeney et al.* Accordingly, *Sweeney et al.* does not teach "communicating the generated item of current time-sensitive information to the customer at the PPOS proximate to the time of the sales transaction." At least for these reasons, *Sweeney et al.* does not teach all of the limitations of independent claims 1, 58, 64 and 65. The rejection under 35 U.S.C. 102(e) of independent claims 1, 58, 64 and 65, and claims depending therefrom, must be withdrawn.

In view of the foregoing, it is respectfully submitted that independent claim 1 of the present application is allowable, even though the foregoing may not present all of the reasons for allowability.

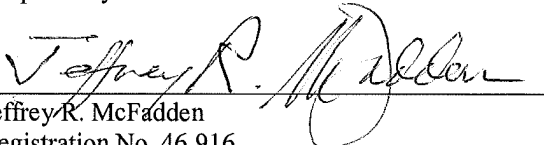
CONCLUSION

It is respectfully submitted that the present application is in condition for immediate allowance, and such action is solicited. If for some reason the Examiner deems that the present application is not in condition for immediate allowance, it is respectfully requested that the Examiner telephone the undersigned at 336-721-3730, in an effort to expedite prosecution.

Respectfully submitted

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Date



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